

July 8, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0401137**

STANTON C. AND CAROL J. MERRELL
Code Enforcement Appeal

Location: 24171 Vashon Highway Southwest

Appellants: **Stanton C. and Carol J. Merrell**
24186 Vashon Highway Southwest
Vashon, Washington 98070
Telephone: (206) 463-7670

King County: Department of Development and Environmental Services,
represented by Bill Turner
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-784
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	July 6, 2005
Hearing Closed:	July 6, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On May 3, 2005 the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Stanton and Carol Merrell concerning property located at 24171 Vashon Highway Southwest in the RA-5 zone. The notice and order cited the property for conversion of a garage into office space without required permits in violation of both zoning and building code requirements. The Merrells have filed a timely appeal of the notice and order.
2. The Merrell parcel is a residential property that is bisected by Vashon Highway Southwest. The larger upland portion of the property contains a residence, with a small detached garage measuring 12 x 21 feet located south of the roadway above a seawall constructed along the Puget Sound shoreline. According to Mr. Merrell the garage was moved to its present location some years back at the request of the Department of Transportation in order to accommodate roadway construction. Mr. Merrell described the northern side of the garage as about 4 ½ feet from the pavement edge, and the staff photos show the southern edge of the structure extending into the shoreline area. Location of a garage within a shoreline area would not be a permitted development under current shoreline regulations, and the garage as it currently exists must be regarded as a non-conforming structure.
3. In the early part of 2005 Mr. Merrell was engaged in converting the garage into an office for the use of a friend and himself. The garage door opening had been sealed and interior remodeling, including installation of a heat supply, electrical wiring, insulation and soundproofing, was underway. Mr. Merrell's residential tenant was neither engaged in the conversion work nor a user of the office space. The January 12, 2005 photographs also show that new windows were installed and carpeting laid. In support of the conversion to office use, Mr. Merrell pointed out that the historic function of the garage for vehicle storage was now both inconvenient and dangerous because the garage doors swing out into the road right-of-way.
4. After Code Enforcement Officer Bill Turner's January visit, Mr. Merrell attempted to obtain a change of occupancy permit. Although the details of this transaction have not been made part of the record, it is undisputed that DDES officials outside the code enforcement section concluded that a change of use permit cannot be legally issued to Mr. Merrell. In the period that has elapsed since January 2005 Mr. Merrell has reinstalled the garage doors, but the interior elements of the conversion that support the new office use remain. Mr. Merrell would like to obtain a determination that his proposed office conversion qualifies for a change of use permit.

CONCLUSIONS:

1. Although interrelated, the county's zoning and building code requirements operate independently of one another and each must be analyzed separately. For the proposed office conversion to be permissible, both zoning and building code requirements must be met.
2. A business office use is permitted within the RA-5 zone only if it is accessory to a legal residential use. An office is not a permitted business use in the RA zone under

KCC 21A.08.060A as a stand-alone development. It may be permitted only as either a residential accessory use or as an accessory home occupation under KCC 21A.08.030A. In both instances such accessory use is only lawful if it is incidental to the residential use, which means that it must be an accessory use engaged in by a resident of the property. Since Mr. Merrell's residential tenant is not engaged in the office use, it cannot qualify as either a residential accessory use or as a home occupation.

3. The fact that the existing garage may be a non-conforming structure with respect to shoreline and zoning setback regulations does not appear in this instance to be a barrier to the modification of either the use or the structure. KCC 21A.32.055 allows modifications to non-conforming uses or structures as long as the existing non-conformity is not expanded or a new type of non-conformity introduced. Since the building footprint is not proposed to be altered, these modification requirements appear to be met.
4. The conversion of a garage into an office is also a change of occupancy within the meaning of the International Building Code. A garage is a group U occupancy under IBC Section 312, while an office is a group B occupancy under Section 304. IBC 105.1 requires issuance of a building permit for a change of occupancy. In addition, the electrical work done on the structure would also require issuance of a building permit under IBC Section 105.1, and as a structure larger than 200 square feet in floor area remodeling the existing garage would not be categorically exempt from building permit requirements under KCC 16.02.240.
5. In summary, conversion of the garage to office space to accommodate persons who are not residents of the property violates the use requirements of the zoning code and a change of occupancy and the performance of electrical work both require a building permit. Accordingly, the notice and order dated May 3, 2005 was appropriately issued to the Appellants and must be upheld.

DECISION:

The appeal is DENIED.

ORDER:

1. No penalties shall be assessed against the Appellants or their property if both of the following deadlines are met:
 - A. Within 60 days of the date of this order the use of the garage as office space shall be terminated and all office fixtures and equipment shall be removed.
 - B. Within 90 days of the date of this order a complete building permit application shall be filed with DDES for approval of any new electrical wiring installed within the garage and for any modifications or alterations to load-bearing structural members.
2. If the deadlines specified above are not met, penalties may be imposed on the Appellants and their property retroactive to the date of this order.

ORDERED this 8th day of July, 2005.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 8th day of July, 2005, via certified mail to the following:

Stanton C. and Carol J. Merrell
24186 Vashon Highway Southwest
Vashon, Washington 98070

TRANSMITTED this 8th day of July, 2005, to the following parties and interested persons of record:

Stanton & Carol Merrell
24186 Vashon Hwy. SW
Vashon WA 98070

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
MS OAK-DE-0100

Trudy Hintz
DDES/LUSD
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
MS OAK-DE-0100

Lamar Reed
DDES/LUSD
MS OAK-DE-0100

Bill Turner
DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 6, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES FILE NO. E0401137.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing was Bill Turner, representing the Department, and Stanton Merrell, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1 DDES staff report
Exhibit No. 2 Copy of the notice and order issued May 3, 2005

Exhibit No. 3	Copy of appeal received May 9, 2005
Exhibit No. 4	Copies of codes cited in the notice and order
Exhibit No. 5	Photographs (six pages, one photo per page)
Exhibit No. 6	Aerial photograph dated 2002
Exhibit No. 7	Copy of DDES log notes

SLS:gao

E0401137 RPT